

Article 31 (UCMJ) [and BDS Agents.]
UCMJ = Uniform Code of Military Justice (10 USC Section 831)

1. The content of Article 31 warnings are, for all practical purposes, the same as Miranda warnings. (Silence and counsel.) Article 31 warnings DO require the accused be informed of the offense of which they are suspected or accused. The consequences of interrogation and not giving Article 31 when one should are the same as when *Miranda* warnings are not given when they should have been. (Suppression of any statement given.) The rules of the effect of invocation of Article 31 rights are the same as *Miranda*.

2. Triggering the rights.

a. Remember that *Miranda* applies when there is a police dominated interrogation. When law enforcement interrogates a person in custody, the interrogation must be preceded by *Miranda*. Article 31 is the same: when a person subject to the code interrogates a person subject to the code, the interrogation must be preceded by Article 31.

b. Suspicion of an offense as a trigger for rights warnings:

(1). Remember that if law enforcement wants to question a civilian who is suspected of an offense – but the suspect is not in custody – the interrogation does NOT have to be preceded by Miranda warnings. No custody – no Miranda.

(2). Under Article 31, suspicion – even suspicion without custody – is enough to trigger Article 31. This is the major difference between Miranda and Article 31. Under Article 31, if a person subject to the code is interrogating a person who is subject to the code, suspicion that the person being questioned is suspected of an offense is sufficient to trigger Article 31 warnings.

3. Who is entitled to receive Article 31 warnings? For all practical purposes (except in war zones and occupied territory), active duty military personnel – to include reservists and guardsmen called to active duty – are the only persons entitled to receive Article 31 warnings. Family members of military personnel do not have to be given Article 31 warnings unless they themselves are military members.

4. Who is required to give Article 31 warnings? See Military Rule of Evidence 305(b)(1).

- a. A *military* superior who outranks the suspect by rank or position.
- b. *Military* law enforcement Personnel. (MPs etc.).
- c. Civilians working for *military* law enforcement in a law enforcement capacity: DoD police, OSI, NCIS.
- d. Those acting as agents of military law enforcement (such as, asking a civilian police officer to interrogate a military suspect, or military participation in a civilian or foreign nation interrogation.)

5. Student question: Are BDS agents required to give Article 31 if they question U.S. Marines that work at US Embassies and they suspect the Marine of an offense? It depends. In my opinion, civilian BDS agents should give Article 31 warnings of military personnel who are suspected of a criminal offense whether the person is in custody or not:

- a. If the commander, military leaders, or military law enforcement officers request the agent's assistance.
- b. If investigating, for some reason, a purely military offense (like AWOL). That would indicate the agent is an agent of the military.
- c. Joint interrogation with military leaders or law enforcement. If military persons are present, the military member might feel compelled to answer because of the leader's presence.
- d. If the agent is in the chain of command in terms of being able to direct their duties or recommend discipline.
- e. If you look or smell like you are doing this directly or indirectly for the military.